

In the Matter of BENDIX PRODUCTS CORP. and PATT. MKRS. ASSN. OF
So. BEND

In the Matter of BENDIX PRODUCTS CORPORATION and BENDIX
INDUSTRIAL POLICE ASSOCIATION

Cases Nos. R-1127 and R-1128, respectively.—Decided October 7,
1939

Automobile and Aircraft Parts Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: company refuses to recognize union formed since previous certification of another union—*Unit Appropriate for Collective Bargaining:* determined in previous proceeding; no controversy as to; policemen constitute—*Employee Status:* policemen—*Election Ordered—Order:* dismissing petition for investigation of representatives filed by one union where no question concerning the representation of employees in an appropriate unit has arisen.

Mr. Jack G. Evans, for the Board.

Cassels, Potter & Bentley, by Mr. Robert B. Johnstone, of Chicago, Ill., for the Company.

Mr. Roy E. Rogers, of South Bend, Ind., for the P. M. A.

Mr. Oliver M. Loomis, of South Bend, Ind., for the B. I. P. A.

Mr. Joseph M. Jacobs, of Chicago, Ill., for the U. A. W. A.

Mr. Abraham J. Harris, of counsel to the Board.

DECISION

ORDER

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On August 13, 1938, Pattern Makers' Association of South Bend,¹ herein called the P. M. A., filed with the Regional Director for the Thirteenth Region (Chicago, Illinois), a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Bendix Products Corporation, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On October 21, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to

¹ Incorrectly designated in the petition as Patt. Mkrs. Assn. of So. Bend.

Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On August 20, 1938, Bendix Industrial Police Association, herein called the B. I. P. A., filed with the Regional Director a petition alleging that a question had arisen concerning the representation of employees of the Company and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On October 21, 1938, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On October 28, 1938, pursuant to Article III, Section 10 (c) (2), of National Labor Relations Board Rules and Regulations—Series 1, as amended, the Board issued an order consolidating the two cases for the purpose of hearing and for all other purposes. On the same day, the Regional Director issued a notice of consolidated hearing, copies of which were duly served upon the Company, the B. I. P. A., the P. M. A., and upon International Union, United Automobile Workers of America, Bendix Local No. 9, herein called the U. A. W. A., a labor organization claiming to represent employees directly affected by the investigation. Thereafter, upon motion of the U. A. W. A., the Regional Director ordered the hearing postponed from November 5 to November 17, 1938, and served copies of his order upon all parties. Pursuant thereto, a hearing was held on November 17, 1938, at South Bend, Indiana, before Mapes Davidson, the Trial Examiner duly designated by the Board. The Board, the Company, the U. A. W. A., and the B. I. P. A. were represented by counsel, and the P. M. A. was represented by an authorized representative. All participated in the hearing. Opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Trial Examiner reserved ruling on a motion by the U. A. W. A. to dismiss the petitions. As to the petition filed by the B. I. P. A., the motion is hereby denied. As to the petition filed by the P. M. A., the motion is hereby granted, in accordance with the Decision and Order hereinbelow set forth. Pursuant to leave granted by the Trial Examiner, the Company and the U. A. W. A. filed memoranda. The Board has considered the arguments presented therein.

Upon the entire record in this consolidated proceeding, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Bendix Products Corporation is a corporation organized under the laws of the State of Indiana. Its principal office and plant is in South Bend, Indiana. It is engaged in the manufacture, sale, and distribution of automobile and aircraft parts consisting principally of carburetors, brakes, and parts therefor. Between January 1 and October 1, 1938, the Company purchased raw materials, consisting of steel, zinc, brass, aluminum, scrap iron, coal, oil, salt, acid, sand, brick, and lumber, in an aggregate amount of approximately 52,232,000 pounds, of which approximately 13,952,000 pounds were obtained outside the State of Indiana. During the same period, the Company manufactured, sold, and distributed finished products which weighed approximately 29,274,000 pounds. The Company's products are sold mainly to the aircraft and automobile industries, and, of its total products sold and distributed during the period mentioned, approximately 22,486,000 pounds were shipped outside the State of Indiana.

II. THE ORGANIZATIONS INVOLVED

Pattern Makers' Association of South Bend is a labor organization affiliated with the Pattern Makers' League of North America, which, in turn, is affiliated with the American Federation of Labor. The P. M. A. admits to its membership the pattern makers employed by the Company.

Bendix Industrial Police Association is an unaffiliated labor organization admitting to its membership the policemen employed by the Company.

International Union, United Automobile Workers of America, Bendix Local No. 9, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to its membership all employees of the Company except those having the authority to hire and discharge.

III. THE QUESTION CONCERNING REPRESENTATION

A. *The Pattern Makers*

On September 16, 1937, the Board issued its Decision and Certification of Representatives² by which the Board certified the U. A. W. A. as the exclusive representative of the employees of the Company in a unit consisting of all the Company's employees paid on an hourly

² 3 N. L. R. B. 682.

basis, including apprentices, factory clerks, and time checkers, and excluding other clerical workers and supervisory employees. The U. A. W. A. contends that all such employees, including the pattern makers, constitute a unit appropriate for the purposes of collective bargaining. The P. M. A. claims that the pattern makers employed by the Company constitute a unit appropriate for the purposes of collective bargaining. In Section V, A, below, we find that the bargaining unit sought to be established by the P. M. A. is inappropriate for the purposes of collective bargaining with the Company.

We therefore find that no question has arisen concerning representation of the pattern makers employed by the Company.

B. The Policemen

By its Decision and Certification of September 16, 1937, the Board found that the policemen employed by the Company constituted a separate appropriate bargaining unit and certified the U. A. W. A. as the exclusive representative of such employees. Thereafter, the B. I. P. A. was formed and sought to bargain with the Company on behalf of its policemen. The Company, however, refused to do so.

Following the certification, the U. A. W. A. sought to bargain, on behalf of the policemen, with the Company. At its suggestion, however, this bargaining was postponed pending negotiation of a contract between the Company and the U. A. W. A. respecting the hourly paid employees. The B. I. P. A. thereafter filed its petition herein, claiming to represent a majority of the policemen employed by the Company. The B. I. P. A. also alleged that the certification of the U. A. W. A. as the exclusive collective bargaining representative of the policemen had been procured by the U. A. W. A. by fraud. We find no basis for such an allegation either in the record in the earlier proceeding or in this proceeding.

As in the earlier proceeding, it is the Company's position in the present proceeding that the policemen are not employees within the meaning of the Act and are not entitled to have a labor organization certified as their exclusive representative for the purposes of collective bargaining. This contention is based mainly upon the fact that the Company's policemen hold commissions as Special Officers from the City of South Bend, Indiana. However, the policemen are hired by the Company and are paid by it. There is no basis for finding that they are anything other than employees of the Company.

We find that a question has arisen concerning representation of the policemen employed by the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

A. *The Pattern Makers*

As stated above, by its Decision of September 16, 1937, the Board determined that the employees of the Company who are paid on an hourly basis, including apprentices, factory clerks, and time checkers, and excluding other clerical workers and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining. This unit includes the pattern makers employed by the Company. No claim was made at the hearing upon which the Board's Decision was based that the pattern makers employed by the Company constitute a unit appropriate for the purposes of collective bargaining. Moreover, despite the fact that the P. M. A. had been formed prior to the hearing, it had never attempted to bargain collectively with the Company. The P. M. A. now claims that a unit composed of the Company's pattern makers is appropriate.

Both prior to and since the Board's Certification of September 16, 1937, the U. A. W. A. has bargained with the Company on behalf of all its hourly paid employees, including the pattern makers. Nothing has occurred since the Board's Decision and Certification to indicate the inappropriateness of the unit there determined to be appropriate. Under such circumstances we see no reason to disturb the bargaining unit heretofore determined by us to be appropriate.

We therefore find that the separate bargaining unit sought to be established by the P. M. A. is not appropriate for the purposes of collective bargaining.

B. *The Policemen*

As stated above, by its Decision of September 16, 1937, the Board determined that the company policemen constitute a unit appropriate for the purposes of collective bargaining.³ We find that, in order to insure to the employees of the Company designated as policemen the

³ Cf. *Matter of Willys Overland Motors, Inc. and International Union, United Automobile Workers of America, Local No. 12*, 9 N. L. R. B. 924. In the instant case, neither the U. A. W. A., the B. I. P. A., nor the Company has raised any question concerning the appropriateness of a separate unit for the police and we shall not, therefore, disturb the unit of policemen determined to be appropriate in our earlier Decision.

full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, all the company policemen constitute a unit appropriate for the purposes of collective bargaining.

VI. THE DETERMINATION OF REPRESENTATIVES

The B. I. P. A. claims to represent a majority of the policemen employed by the Company. No evidence was introduced at the hearing, however, upon the basis of which we can make a finding that a majority of the policemen had designated and selected that organization as their representative for the purposes of collective bargaining. We therefore find that an election by secret ballot is necessary to resolve this question concerning representation.

We shall direct that the policemen employed by the Company during the last pay-roll period next preceding the date of the Direction of Election, including those who did not work during such pay-roll period because they were ill or on vacation, and those who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause, shall be eligible to vote in the election.

On the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of the policemen employed by Bendix Products Corporation, South Bend, Indiana, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

2. No question has arisen concerning the representation of the pattern makers employed by Bendix Products Corporation, South Bend, Indiana, in a unit which is appropriate for the purposes of collective bargaining, within the meaning of Section 9 (c) of the Act.

3. The policemen employed by the Company are employees, within the meaning of Section 2 (3) and Section 9 of the Act.

4. The policemen employed by the Company constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, the National Labor Relations Board hereby orders that the petition for investigation and certification filed by Pattern Makers' Association of South Bend be, and it hereby is, dismissed.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Bendix Products Corporation, South Bend, Indiana, an election by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction of Election, under the direction and supervision of the Regional Director for the Thirteenth Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the policemen employed by Bendix Products Corporation during the last pay-roll period next preceding the date of this Direction, including those who did not work during such pay-roll period because they were ill or on vacation, and those who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause, to determine whether they desire to be represented by International Union, United Automobile Workers of America, Bendix Local No. 9, or Bendix Industrial Police Association, for the purposes of collective bargaining, or by neither.

MR. WILLIAM M. LEISERSON, concurring in part and dissenting in part:

In a previous decision involving the same company and employees as in the present case the Board made a definite finding that "all of the employees of the Company who are paid on an hourly basis, including apprentices, factory clerks, and time checkers, but excluding other clerical workers and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining." In the same decision the Board also found that all the company policemen constitute another separate unit for purposes of collective bargaining. In accordance with these findings the Board certified the International Union, United Automobile Workers of America, Bendix Local No. 9, as the exclusive representative designated and selected by separate majorities of the employees of both units.⁴

I agree that the petition filed by the Pattern Makers' Association should be dismissed. When the Board, after due investigation and hearing, has determined that all the hourly paid production employees of the Company constitute an appropriate unit, I am of the opinion that it is not free in subsequent proceedings to find the same unit

⁴ 3 N. L. R. B. 682.

inappropriate or to disregard it. I think such changes in succeeding opinions make stable collective bargaining impossible. The collective bargaining that follows certification of a representative of an appropriate unit establishes rights and privileges for the employees constituting the unit which would be adversely affected by the Board changing its mind as to the appropriateness of a unit. It seems to me arbitrary and capricious to make different findings as to the appropriateness of a bargaining unit in two successive cases involving the same production employees.

With respect to the policemen, the representative certified by the Board in the first case has not yet had the opportunity to enjoy the benefit of the certification. The Company has not bargained with the certified representative because of an injunction that was secured by the Bendix Industrial Police Association and for other reasons. I am of the opinion that a proceeding for a new certification should not be entertained until the first certification has been honored.

For the reasons stated, I think that both petitions in the present case should be dismissed.

CHAIRMAN MADDEN, concurring in part and dissenting in part:

I concur in so much of the decision in this case as relates to the policemen and in the Direction of Election.

I am unable, however, to concur in so much of the decision as relates to the pattern makers. The only distinction between this case and cases in which the *Globe* principle⁵ has been applied seems to be that in the present case an industrial unit in the plant in question has heretofore been determined by the Board to be an appropriate unit for the purposes of collective bargaining with the Company. This attempted distinction seems to me unsound. For the reasons stated in my dissenting opinion in *Matter of American Can Co.*,⁶ I believe that the *Globe* Doctrine should be applied in the present case.

⁵ The reference is to the doctrine whereby the Board has, in cases in which a union that has historically bargained on a craft basis has shown substantial membership among a group of craft employees and has requested the establishment of a craft unit, either established the craft group as a separate unit or permitted the craft employees to vote separately as to whether they wished to be represented by the craft union in a separate unit or to merge with the other employees in a broader unit. See *Matter of The Globe Machine and Stamping Co. and Metal Polishers Union, Local No. 3*; *International Association of Machinists, District No. 54*; *Federal Labor Union 18788*, and *United Automobile Workers of America*, 3 N. L. R. B. 294, and subsequent cases.

⁶ 13 N. L. R. B. 1252.